

**NASD REGULATION, INC.
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	
	:	
v.	:	
	:	
	:	Disciplinary Proceeding
	:	No. C10970158
	:	
	:	Hearing Officer - DMF
	:	
	:	
Respondents.	:	

**ORDER EXTENDING TIME FOR RESPONDENTS
TO ANSWER**

The record in this proceeding shows that the Complaint was served on the Respondents by certified first class mail on August 13, 1997. Accordingly, the time for Respondents to Answer expired on September 10, 1997. No Respondent filed an Answer by that date.

The Hearing Officer did receive on September 10 a letter from counsel for Respondents _____ requesting an extension of time to answer the Complaint to October 13, 1997. On September 11, 1997, the Hearing Officer issued an order stating that, under the circumstances, the Hearing Officer would treat the letter as a motion by Respondents _____ for an extension of time to file their Answer. Pursuant to Rule 9146(d), the Hearing Officer shortened the time for other parties to oppose or otherwise respond to this motion to September 17, 1997. In addition, pursuant to Rule 9215(f), the Hearing Officer ordered the Department of Enforcement to send Second Notices of Complaint to all Respondents.

This order has been published by the NASDR Office of the Hearing Officers and should be cited as OHO Order 97-2 (C10970158).

On September 16, 1997, Enforcement filed a Second Notice of the Complaint, together with a Certificate of Service indicating that it had served the Second Notice on Respondent _____ by certified first class mail on September 11. On September 17, 1997, Enforcement filed an Opposition to _____ Request for an Extension of Time to Answer the Complaint.

Rule 9222(a) generally authorizes extensions of the time limits imposed by the Code of Procedure “for good cause shown.” Similarly, Rule 9215 specifically authorizes the Hearing Officer to extend the time for filing an Answer “for good cause.” Expeditious resolution of disciplinary proceedings serves the interests of the industry and the investing public. In most cases, the time limits in the Code will afford the parties adequate time to complete the action required. Accordingly, the Hearing Officer will strictly enforce the “good cause” requirement. In particular, ordinarily the Hearing Officer will not grant last minute requests for extensions absent a strong showing of exigent, unforeseen circumstances.

The letter requesting an extension of time represents that Respondent _____, who is represented to be the Chairman of Respondent _____, “was hospitalized in mid-August as a result of critical medical problems relating to his pancreas, and underwent surgery last week. _____ will not return to work for several weeks, assuming a trouble free recovery, and his participation in the defense of this matter is a necessity.” The letter further indicated that counsel for Respondents _____ calculated that their Answer was due on September 15, and requested an extension of time to October 13. (In fact, the Answer was due on September 10.)

In opposing the request for an extension, Enforcement argues that Respondents have failed to show “good cause” within the meaning of Rules 9222 and 9215. Specifically,

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Enforcement argues that Respondent _____ participation in preparing an Answer is not necessary, because the same counsel represented Respondents _____ in the investigation that led to the Complaint; that none of the factual or legal issues have changed; and that counsel's familiarity with the issues is evidenced by the "Wells submission" that was submitted before the Complaint was issued. Enforcement further argues that Respondent _____ unavailability to assist counsel in preparing an Answer is questionable in light of a recent telephone conversation in which an employee of Respondent _____ advised a member of the District 10 staff to contact Respondent _____ in his hospital room to obtain an answer to a question posed by the staff member. Finally, Enforcement argues that there would be no prejudice to Respondents if their request for an extension is denied, because they are afforded additional time to file an Answer from the date of service of the Second Notice.

While counsel for Respondents _____ may be familiar with the issues in the case, it is not unreasonable to request an opportunity for further consultation with the client for purposes of preparing an Answer. Enforcement does not contest the representations that Respondent _____ has recently been hospitalized and undergone surgery. Hospitalization requiring surgery will generally satisfy the "good cause" standard for a reasonable extension of time. The telephone conversation with a member of the staff indicates that an _____ employee thought Respondent _____ was able to answer questions from his hospital room, but the staff member did not speak to Respondent _____, and has no personal knowledge of his condition. Under these circumstances, the Hearing Officer concludes that Respondents have shown good cause for an extension of time to file their Answer.

Pursuant to Rule 9222(b)(2), extensions of time may not exceed 28 days, unless the Hearing Officer provides reasons why a longer period is necessary. While Respondents have

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shown good cause for an extension, they have not established the need for an extension of longer than 28 days from the date their Answer was first due – September 10. Accordingly, the time for Respondents _____ to file their Answer will be extended to October 8, 1997.

Therefore, it is ORDERED that the time for Respondents _____ to file their Answer to the Complaint is extended to October 8, 1997.

David M. FitzGerald
Hearing Officer

Dated: Washington, DC
September 18, 1997